

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHARLYN K. COLLINS

Claimant

VS.

DOLD FOODS, INC.

Respondent

Self-Insured

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Docket No. 220,681

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on June 4, 1997.

ISSUES

In her application for review, claimant states the issue is that the Administrative Law Judge exceeded his jurisdiction by denying appropriate findings on remand from the Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed.

This is the second appeal in this case from a preliminary hearing order. In the first Order, dated March 27, 1997, the Administrative Law Judge denied claimant's request for benefits on the grounds that she had not given notice of accident within ten days as required by K.S.A. 44-520. Claimant appealed that finding, and the Appeals Board reversed. The Appeals Board found a later date of accident and found notice for that later date was timely. The Board then, by Order dated May 30, 1997, remanded the case to the Administrative Law Judge for further finding regarding the request for preliminary benefits. The Administrative Law Judge then entered the Order which is the subject of this appeal. The Order stated:

Temporary total disability is denied.

The outstanding medical is reserved until final award.

Request for a neurosurgeon or neurologist is denied.

This matter is ready to proceed to pretrial conference and regular hearing.

Claimant contends that the Administrative Law Judge has ignored the remand Order by this Board. Claimant requests that the matter not be remanded to the Administrative Law Judge because of concern that the Administrative Law Judge will ignore an order by this Board.

The Order entered by the Administrative Law Judge after the remand gives no reasons for denying benefits. This fact leaves the door open for the argument claimant makes. The second Order can be construed as a decision to ignore the decision by the Board. The Board does not, however, consider it appropriate to so construe the Order by the Administrative Law Judge unless the record permits no other reasonable explanation. See Meyer v. Meyer, 209 Kan. 31, 39, 495 P.2d 942 (1972).

In this case, the record would reasonably permit a conclusion that the Administrative Law Judge based his Order on a determination that claimant is not currently in need of temporary total or medical benefits. At the time of the hearing, claimant had returned to work and would, therefore, not be entitled to temporary total disability benefits. Claimant had also undergone a course of medical treatment. She had gone on her own to Brian A. Johnson, M.D. Dr. Johnson had treated claimant from September 17, 1996, through February 11, 1997. He ordered physical therapy and medication. He also referred claimant for evaluation by a neurological surgeon, William M. Shapiro, M.D. The last entry in Dr. Johnson's records, the one for February 11, 1997, states claimant had "platued [*sic*] terms of her improvement." He referred her for a second evaluation by Dr. Shapiro. Claimant testified that she saw Dr. Shapiro on March 21, 1997, and he released her to return to work.

While this case was pending on appeal, the Board issued a decision in Banh v. The Boeing Company, Docket No. 210,271 (July 1997). Claimant has filed a supplemental brief arguing that the Banh case involved substantially the same circumstances as are presented here. The Appeals Board considers the circumstances here to be materially different. There, the uncontroverted medical evidence showed a current need for medical treatment.

WHEREFORE, the Appeals Board finds that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish, dated June 4, 1997, should remain in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

c: David H. Farris, Wichita, KS
Douglas D. Johnson, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director